

**ANNUAL REPORT  
OF THE  
ADMINISTRATIVE RULES  
OVERSIGHT COMMISSION**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**October, 1999**

# INDIANA LEGISLATIVE COUNCIL

## 1999

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# **ADMINISTRATIVE RULES OVERSIGHT COMMITTEE**

## **Membership Roster**

### **Representatives**

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### **Staff**

George T. Angelone  
Attorney for the Committee

Mark Bucherl  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly created the Administrative Rules Oversight Committee by statute. IC 2-5-18-4 specifies that the purpose of the Committee is to exercise "oversight over the rules of any agency that is not listed in IC 4-21.5-2-4". IC 2-5-18-8 directs the Committee to do the following:

Sec. 8. (a) The committee shall receive and may, at its discretion, review a complaint filed by a person regarding a rule or practice of an agency.

(b) The committee may review an agency rule, an agency practice, or a failure of an agency to adopt a rule.

(c) The committee may recommend that a rule be modified, repealed, or adopted.

(d) When appropriate, the committee shall prepare and arrange for the introduction of a bill to clarify the intent of the general assembly when the general assembly enacted a law or to correct the misapplication of a law by an agency.

IC 4-22-2-46 also requires the Committee to "carry out a program to review each rule adopted under this chapter [IC 4-22-2] that has a fiscal impact of more than five hundred thousand dollars (\$500,000)".

The Legislative Council, in Legislative Council Resolution 99-1, referred the following study topic to the Committee for the interim between the 1999 and 2000 Sessions of the General Assembly:

Studying the feasibility of delaying the effective dates and suspending the operation of administrative rules in order to permit the general assembly to have a reasonable opportunity to review each rule or emergency rule.

Legislative Council Resolution 99-2 provides that "[s]tudy committees created by statute to which topics have been referred by the Council are requested to report their findings and recommendations on those topics to the Council within 10 working days after their final meeting for the interim. This report is limited to the topic assigned to the Committee by Legislative Council Resolution 99-1.

## **II. INTRODUCTION AND REASONS FOR STUDY**

The general procedures for the adoption of administrative rules are codified in IC 4-22-2. At the earliest, a rule adopted in conformity with IC 4-22-2 is effective either:

- (1) when the document containing the rule is filed with the Secretary of State, if the rule qualifies as an emergency rule; or
- (2) thirty days after the document containing the rules is filed with the Secretary of State, if the rule does not qualify as an emergency rule.

An agency has the option of establishing a later effective date in the document containing its rule.

It is possible under current law for a rule to become effective before the General Assembly has an opportunity to review the rule and enact legislation to either void the rule or modify the statutory language on which the rule is based. Legislative review of rules is not required in Indiana before an administrative rule becomes effective.

The Family and Social Services Evaluation Committee considered this issue during the interim between the 1998 and 1999 Sessions of the General Assembly without reaching a consensus. SB 129 was introduced in the 1999 Session to deal with this issue, but the bill was not given a committee hearing or otherwise considered by the General Assembly. SB 129 would not have delayed the effective date of rules but would have required the Administrative Rules Oversight Committee to review all proposed rules before they are adopted. The Legislative Council assigned the issue to the Administrative Rules Oversight Committee for further study.

### **III. SUMMARY OF WORK PROGRAM**

The Committee met three times before November 1, 1999. The Committee considered the topic assigned by the Legislative Council to the Committee in its first meeting on September 13, 1999 and in its second meeting on October 9, 1999. The Committee took testimony at the first meeting and adopted findings of fact and recommendations at its second meeting. A final report containing the findings and recommendations was reviewed and adopted at the third meeting on October 20, 1999.

### **IV. SUMMARY OF TESTIMONY**

The Committee heard testimony from members of the public and employees of the executive department of state government. The public testimony suggested that there are circumstances in which failure of the General Assembly to intervene in a rulemaking action can result in irreparable harm to the regulated public. The Indiana Health Care Association gave an example of a dispute concerning the case mix reimbursement rules for nursing homes. The General Assembly eventually enacted legislation that resolved the dispute. However, before the General Assembly met, the rules were scheduled to become effective. As a consequence, the nursing home industry felt compelled to initiate litigation to stop the implementation of the rules at great expense to the State of Indiana and the nursing home industry.

Representatives of the executive department of state government pointed to the many procedures in current law that allow public input during the adoption process. They noted that most rules are adopted without anyone presenting objections to the rule. They also pointed out that there are various situations in which the public could be harmed if the effective date of a rule were delayed until after the General Assembly met and considered the rule. Finally, they pointed out that legislative oversight of administrative rules would require legislators to develop substantial expertise and invest substantial time to become familiar with a broad range of highly technical subjects covered by rules.

The Committee learned that in the period between October 1997 and September 1998, approximately 160 proposed and emergency rules were published in the Indiana Register. In the period between October 1998 and September 1999, approximately 150 proposed and emergency rules were published.

The Committee also learned that, according to "1998\$2000 State and Federal Survey" compiled by the Administrative Codes and Registers Section of the National Association of Secretaries of State, the majority of the states do not require legislative action before a rule is adopted. The following sixteen states require some form of legislative action before a rule is made:

Arkansas	Nebraska
Connecticut	New Hampshire
Florida	New Mexico
Idaho	North Carolina
Illinois	Oklahoma
Kentucky	Pennsylvania
Louisiana	West Virginia
Maine	Wisconsin

Most of these states, however, allow emergency rules on the subject of a permanent rule to take effect pending final legislative review of the related permanent rule. In many of these states, various categories of rules are exempt from legislative oversight.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following findings of fact:

1. Current law gives the Committee authority to review proposed rules before they become effective.
2. Current law also allows the Committee to review a proposed rule without waiting for a member of the public to file a complaint about the rule.
3. The Committee as a matter of internal policy has limited the scope of its review to finally adopted rules that:
  - A. are the subject of written complaint from the public; or
  - B. have a fiscal impact of more than \$500,000.
4. This practice has the advantage of:
  - A. giving the executive department of state government ample opportunity to resolve disputes before its rules are adopted;
  - B. limiting the time that legislators must invest in reviewing rules; and
  - C. focusing legislative oversight on rules which one or more members of the public have identified as being potentially unlawful or unwise.
5. Reliance on written complaints is a very efficient and effective method of identifying potentially unlawful agency rules and practices as long as the public is aware of the existence of the Administrative Rules Oversight Committee and willing to file complaints with the Committee.
6. An expansion of the oversight responsibilities of the Administrative Rules Oversight

Committee or another legislative committee beyond the review of complaints will require the allocation of substantially more legislator and staff time.

7. It is unclear whether the number of disputes over the form and content of administrative rules is sufficient to warrant the enactment of a law that would delay the effective dates and suspend the operation of administrative rules in order to permit the General Assembly to have a reasonable opportunity to review each rule or emergency rule.

8. If such a law delaying the effective date of rules were adopted, other statutory changes would be needed to meet emergencies, including changes such as exempting some categories of rules from legislative oversight and expanding the authority of an agency to enforce temporary rules while the General Assembly reviews a related permanent rule.

The Committee made the following recommendations:

1. Although recognizing that some benefits may accrue from immediately enacting a law that would delay the effective dates and suspend the operation of administrative rules in order to permit the General Assembly to have a reasonable opportunity to review each rule or emergency rule, the Committee makes no recommendation as to whether such a law ought to be adopted.

2. The Committee recommends that, if the General Assembly finds that a more comprehensive review of proposed and emergency rules than exists under current law is needed, the General Assembly enact legislation to require the Administrative Rules Oversight Committee or another legislative committee to evaluate all proposed and emergency rules.

3. The Committee recommends that the Committee continue to study the issues related to the rulemaking process.

4. The Committee recommends that the Committee utilize its current authority under IC 2-5-18-4 and IC 2-5-18-8 to begin a program to study the frequency and nature of public comments made to agencies adopting proposed rules and the changes that agencies make in response to public comments.

5. The Committee recommends that:



- A. state agencies adopting rules;
- B. the Office of the Attorney General; and
- C. the Office of the Governor;

cooperate with the Committee to implement this study by providing the Committee with a copy of the record of comments made by the public about a proposed rule and the responses made by the agency to public comments when the record is submitted to the Attorney General as part of the supporting documentation for a proposed rule.

6. The Committee also recommends that, in order to facilitate the filing of complaints with the Committee, the Committee reinstate its prior practice of issuing press releases and other information about the Committee and its functions to:

- A. the public;
- B. legislators who are not members of the Committee; and
- C. state agency heads.

7. In addition, the Committee recommends that information about the Committee and its complaint process be placed on the legislative Internet WEB site operated through Access Indiana.

## WITNESS LIST

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